IN THE COURT OF APPEALS OF IOWA

No. 1999-490 (9-747) / 99-0108
Filed May 10, 2000

IN RE THE MARRIAGE OF JOHN HENRY WHITE AND MELISSA KNORR WHITE

FILED
MAY 10 2000
CLERK SUPREME COURT

Upon the Petition of
JOHN HENRY WHITE,
Petitioner-Appellant,

And Concerning
MELISSA KNORR WHITE
n/k/a MELISSA RADTKE,
Respondent-Appellee.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, Judge.

John White appeals from the district court's ruling on the parties' cross-motions for contempt for failure to pay child support. **AFFIRMED AS MODIFIED.**

Stuart G. Hoover of Naylor, Hoover, Peters & Blair, P.C. Dubuque, for appellant.

Darin S. Harmon of Kintzinger Law Firm, P.L.C., Dubuque, for appellee.

Considered by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

John White appeals the decision of the district court which found him in contempt for failure to pay a portion of his children's medical expenses. John claims his failure to pay was not willful. He also claims he was denied due process because the hearing was limited to two hours. Melissa Radtke, formerly Melissa White, raises several procedural issues concerning the appeal and seeks appellate attorney fees. We affirm as modified.

John and Melissa were formerly married. They have two children, Nathaniel, born in February 1982, and Corey, born in January 1988. A dissolution decree was entered for the parties on August 29, 1989. The children were placed in the parties' joint custody, with shared physical care. Neither party was ordered to pay child support. Melissa was required to maintain health insurance for the children.

In September 1994, the decree was modified to provide John should pay Melissa $79 per month as reimbursement for his share of the cost of health insurance. Additionally, each party was made responsible for one-half of the children's medical expenses not covered by insurance. John was also ordered to pay $990 for his share of current unpaid medical expenses at the rate of $100 per month until that sum was paid in full.

In January 1998, Melissa filed an application to have John found in contempt for failure to pay $79 per month and his share of the children's medical expenses. John filed an application in May 1998 to have Melissa found in contempt for failure to pay her share of the children's medical and school expenses.

A two-hour hearing on both applications was held in December 1998. The court concluded Melissa was not in contempt. The court found John was not in contempt for failing to pay $79 per month because Melissa had led him to believe it would be satisfactory to pay a lesser amount. The court also found John was not in contempt for failing to pay medical expenses incurred after the modification order because Melissa had not made a clear, specific and detailed demand for payment.

The court determined John was in contempt for failing to pay the full amount of $990, as required by the September 1994 modification. The court found John's total share of uninsured medical care expenses and health insurance costs was $3719.33, and ordered him to pay this amount. The court sentenced John to ten days in jail, but suspended the sentence and gave him an opportunity to cure the contempt by paying $100 per month on his debt, until the amount is paid in full. John's post-trial motions were denied. John appealed.

I. Timeliness of Appeal

Melissa claims John's appeal is untimely because his motion to reconsider is not a valid motion pursuant to Iowa Rule of Civil Procedure 179(b), and thus, did not toll the time for filing an appeal.

Generally, we have no jurisdiction to consider an appeal filed more than thirty days following a court's final judgment. *Robco Transp., Inc. v. Ritter,* 356 N.W.2d 497, 499 (Iowa 1984). A timely motion under rule 179(b) will toll the running of the thirty-day period within which an appeal must be taken. *See Qualley v. Chrysler Credit Corp.,* 261 N.W.2d 466, 471 (Iowa 1978). However, a motion to reconsider which is not in substance a motion for new trial or rule

179(b) motion will not extend the time for appeal. *Beck v. Fleener*, 376 N.W.2d 594, 596 (Iowa 1985).

John's motion is captioned "Motion for Reconsideration," but clearly states it is brought under rule 179(b). Furthermore, in her response, Melissa states, "Division I of Petitioner's Motion for Reconsideration is basically a 179(b) motion." The district court stated, "The respondent has now filed a Motion to Reconsider, which the court treats as a rule 179(b) motion, and a motion for new trial." We conclude John's motion was brought pursuant to rule 179(b) and was effective to toll the time for filing an appeal. John's appeal was timely.

II. Writ of Certiorari

Melissa asserts we should not consider John's appeal because under Iowa Code section 665.11 he should have filed a writ of certiorari, and not an appeal, after he was found in contempt by the district court. Under Iowa Rule of Appellate Procedure 304, we may treat a notice of appeal as an application for issuance of a writ of certiorari. *Harris v. Iowa Dist. Court*, 570 N.W.2d 772, 774 (Iowa App. 1997). We are not required to dismiss the action, but may proceed as though the proper form of review had been sought. Iowa R. App. P. 304.

III. Amount in Controversy

Melissa contends John's appeal should be dismissed under Iowa Rule of Appellate Procedure 3 because the amount in controversy is less than $5000. Rule 3 applies to civil appeals. As noted above, this case is considered as a petition for writ of certiorari. The appellate rules do not place any specific monetary limitations on petitions for writ of certiorari. See Iowa R. App. P. 301-303.

Even if rule 3 applied in this case, the test for determining the existence of the requisite amount in controversy is whether the trial court could have entered judgment against any party for that amount. *Hrbek v. State,* 554 N.W.2d 895, 896 (Iowa 1996). Melissa's petition seeks to have John found in contempt of court. Her petition does not involve a specific "amount in controversy." We determine John's appeal should not be dismissed under rule 3.

IV. Contempt

John claims the district court should not have found him in contempt for failing to pay $990 to Melissa, as required by the September 1994 modification. He points out he made payments on this amount. John asserts he was paying other expenses for the children, and these amounts should be offset against his obligation to pay the children's unreimbursed medical expenses.

On review of a contempt ruling, we must determine whether substantial evidence exists which would convince a rational trier of fact the alleged contemnor is guilty of contempt beyond a reasonable doubt. *Christensen v. Iowa Dist. Court,* 578 N.W.2d 675, 678 (Iowa 1998). A party requesting a contempt finding has the burden of proving a contemnor (1) has a duty to obey a court order, and (2) willfully failed to perform that duty. *Gimzo v. Iowa Dist. Court,* 561 N.W.2d 833, 835 (Iowa App. 1997).

The 1994 modification specifically required John to pay $990 to Melissa for his share of accrued unreimbursed medical expenses. The district court found John had only paid $790 of this amount, and two payments of $100 each had not been made. John had sufficient funds to pay other amounts, but did not pay the final amount of $200. Under the facts of the case, there is sufficient

evidence to show John was in contempt for failing to pay $990 as required by the 1994 modification.

V. Sanctions

The district court found John's total share of uninsured medical care expenses and health insurance costs was $3719.33, which included the $200 he had previously failed to pay. The court sentenced John to ten days in jail, but suspended the sentence and gave him an opportunity to cure the contempt by paying $100 per month on his debt, until the full debt of $3719.33 was paid.

Generally, contempt is unavailable to enforce money judgments. Iowa Code § 626.1 (1997); *Harris v. Iowa Dist. Court,* 584 N.W.2d 562, 563 (Iowa 1998). An exception is found, however, in sections 598.23 and 598.23A, which create special contempt proceedings for support orders entered in dissolution decrees. *See Burke v. Iowa Dist. Court,* 546 N.W.2d 582, 583 (Iowa 1996). Contempt proceedings under these sections are not a separate cause of action, but a remedy specifically appended in order to enforce orders already entered. *In re Marriage of Rathe,* 521 N.W.2d 748, 750 (Iowa 1996).

We find the district court could enforce the 1994 modification and order John to pay $100 per month until he pays the full amount of $990. John was required to pay this amount in the modification order, and he failed to do so. We also find the court could determine the amount of uninsured health care expenses which John should be required to pay. We conclude, however, the court should not have included as part of the contempt sanctions the requirement that John pay $100 per month until the full amount of $3719.33 was paid, when the court only found John in contempt for failing to pay the full amount of $990.

Although it was appropriate for the court to adjudicate John's current financial obligations under the parties' modified decree, it was not appropriate for the court to require payment of that balance under threat of contempt sanctions, such as a jail sentence, where no finding of contempt was made. We therefore affirm the sanction requiring John to pay the balance of $990 until it is paid in full, but we modify the sanction to eliminate any further requirement of payment as a sanction for contempt.

VI. Due Process

John asserts he was denied due process because he was not allowed to present his case. The contempt hearing was set for two hours. John claims Melissa used almost all of the time presenting evidence in support of her contempt allegations, and he was left with little time to show he was not in contempt or to present evidence to support his allegations against Melissa.

Due process mandates that persons who are required to settle disputes through the judicial process must be given a meaningful opportunity to be heard. *In re Marriage of Seyler,* 559 N.W.2d 7, 9 (Iowa 1997) (citing *Broddie v. Connecticut,* 401 U.S. 371, 377, 91 S. Ct. 780, 786, 28 L. Ed. 2d 113, 118 (1971)). The extent and nature of the hearing required for due process varies according to the needs and circumstances of a given case. *Kirk v. Iowa Dist. Court,* 508 N.W.2d 105, 108 (Iowa App. 1993). Time limits are not favored, but if they are imposed, they must relate to the fairness of a trial and be applied with sufficient flexibility to ensure a fair trial. *In re Marriage of Ihle,* 577 N.W.2d 64, 68 (Iowa App. 1998).

After reviewing the record, we find John was given sufficient time to present his case. John's counsel used most of his time cross-examining Melissa and her husband, and only presented John's testimony. At the hearing, John did not object to the time limitation or ask for additional time to present his case. We determine he was not denied due process by the two-hour time limitation.

VII. Attorney Fees

Melissa seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Daniels,* 568 N.W.2d 51, 56 (Iowa App. 1997). Each party should pay his or her own attorney fees for this case.

We affirm the judgment against John for uninsured medical care expenses and health insurance costs. However, we modify the contempt sanction to require only that John pay $100 per month until his debt of $990 is paid in full. We affirm the district court on all other issues raised in this appeal. We eliminate any further requirement of payment as a sanction for contempt. Costs of this appeal are assessed to Melissa.

AFFIRMED AS MODIFIED.